

# LEGAL SERVICES

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## MEMORANDUM

November 28, 2003

**SUBJECT:** Salmon enhancement tax (Work Order No. 23-LS1421\A)

**TO:** Senator Ben Stevens  
Attn: Cheryl Sutton

**FROM:** George Utermohle *GU*  
Legislative Counsel

Enclosed is the draft bill increasing the options for tax rates under the salmon enhancement tax that you requested.

The bill provides additional tax rate options for the "self-imposed" salmon enhancement tax on the value of salmon sold by commercial fishermen. The process established by the bill is probably an improper delegation of the legislature's taxing power to a private party. Under art. IX, sec. 1 and art. X, sec. 2 of the Alaska Constitution<sup>1</sup>, the state may not delegate its taxing power to an entity other than a city or borough. In State v. Alex, 646 P.2d 203, 211 (Alaska 1982) the Alaska Supreme Court found that the delegation of the legislature's taxing power to private regional aquaculture associations by allowing the associations to vote on whether the tax should be imposed was unconstitutional. I raise this point so that you are aware of potential issues that may arise in regard to this bill.

If I may be of further assistance, please advise.

GU:med  
03-739.med

Enclosure

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<sup>1</sup> Article IX, sec. 1, Constitution of the State of Alaska states:

**Taxing Power.** The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.

Article X, sec. 2, Constitution of the State of Alaska states:

**Local Government Powers.** All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

23-LS1421VA  
Utermohle  
11/28/03

**SENATE BILL NO.**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY**

Introduced:  
Referred:

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the rate of the salmon enhancement tax."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **\* Section 1.** AS 43.76 is amended by adding new sections to read:

4 **Sec. 43.76.003. Ten percent salmon enhancement tax.** (a) A person  
5 holding a limited entry permit under AS 16.43 shall pay a salmon enhancement tax at  
6 the rate of ten percent of the value of salmon, as defined in AS 43.75.290, that the  
7 person removes from the state or transfers to a buyer in the state. The buyer shall  
8 collect the salmon enhancement tax at the time the salmon is acquired by the buyer.

9 (b) A ten percent salmon enhancement tax may only be levied or collected  
10 under (a) of this section

11 (1) in a region designated by the commissioner of fish and game for  
12 the purpose of salmon production under AS 16.10.375;

13 (2) if there exists in that region an association determined by the  
14 commissioner of fish and game to be a qualified regional association under  
15 AS 16.10.380; and

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1 (3) if the qualified regional association approves the ten percent  
2 salmon enhancement tax under AS 43.76.015.

3 **Sec. 43.76.004. Nine percent salmon enhancement tax.** (a) A person  
4 holding a limited entry permit under AS 16.43 shall pay a salmon enhancement tax at  
5 the rate of nine percent of the value of salmon, as defined in AS 43.75.290, that the  
6 person removes from the state or transfers to a buyer in the state. The buyer shall  
7 collect the salmon enhancement tax at the time the salmon is acquired by the buyer.

8 (b) A nine percent salmon enhancement tax may only be levied or collected  
9 under (a) of this section

10 (1) in a region designated by the commissioner of fish and game for  
11 the purpose of salmon production under AS 16.10.375;

12 (2) if there exists in that region an association determined by the  
13 commissioner of fish and game to be a qualified regional association under  
14 AS 16.10.380; and

15 (3) if the qualified regional association approves the nine percent  
16 salmon enhancement tax under AS 43.76.015.

17 **Sec. 43.76.005. Eight percent salmon enhancement tax.** (a) A person  
18 holding a limited entry permit under AS 16.43 shall pay a salmon enhancement tax at  
19 the rate of eight percent of the value of salmon, as defined in AS 43.75.290, that the  
20 person removes from the state or transfers to a buyer in the state. The buyer shall  
21 collect the salmon enhancement tax at the time the salmon is acquired by the buyer.

22 (b) An eight percent salmon enhancement tax may only be levied or collected  
23 under (a) of this section

24 (1) in a region designated by the commissioner of fish and game for  
25 the purpose of salmon production under AS 16.10.375;

26 (2) if there exists in that region an association determined by the  
27 commissioner of fish and game to be a qualified regional association under  
28 AS 16.10.380; and

29 (3) if the qualified regional association approves the eight percent  
30 salmon enhancement tax under AS 43.76.015.

31 **Sec. 43.76.006. Seven percent salmon enhancement tax.** (a) A person

1 holding a limited entry permit under AS 16.43 shall pay a salmon enhancement tax at  
2 the rate of seven percent of the value of salmon, as defined in AS 43.75.290, that the  
3 person removes from the state or transfers to a buyer in the state. The buyer shall  
4 collect the salmon enhancement tax at the time the salmon is acquired by the buyer.

5 (b) A seven percent salmon enhancement tax may only be levied or collected  
6 under (a) of this section

7 (1) in a region designated by the commissioner of fish and game for  
8 the purpose of salmon production under AS 16.10.375;

9 (2) if there exists in that region an association determined by the  
10 commissioner of fish and game to be a qualified regional association under  
11 AS 16.10.380; and

12 (3) if the qualified regional association approves the seven percent  
13 salmon enhancement tax under AS 43.76.015.

14 **Sec. 43.76.007. Six percent salmon enhancement tax.** (a) A person holding  
15 a limited entry permit under AS 16.43 shall pay a salmon enhancement tax at the rate  
16 of six percent of the value of salmon, as defined in AS 43.75.290, that the person  
17 removes from the state or transfers to a buyer in the state. The buyer shall collect the  
18 salmon enhancement tax at the time the salmon is acquired by the buyer.

19 (b) A six percent salmon enhancement tax may only be levied or collected  
20 under (a) of this section

21 (1) in a region designated by the commissioner of fish and game for  
22 the purpose of salmon production under AS 16.10.375;

23 (2) if there exists in that region an association determined by the  
24 commissioner of fish and game to be a qualified regional association under  
25 AS 16.10.380; and

26 (3) if the qualified regional association approves the six percent  
27 salmon enhancement tax under AS 43.76.015.

28 **Sec. 43.76.008. Five percent salmon enhancement tax.** (a) A person  
29 holding a limited entry permit under AS 16.43 shall pay a salmon enhancement tax at  
30 the rate of five percent of the value of salmon, as defined in AS 43.75.290, that the  
31 person removes from the state or transfers to a buyer in the state. The buyer shall

1 collect the salmon enhancement tax at the time the salmon is acquired by the buyer.

2 (b) A five percent salmon enhancement tax may only be levied or collected  
3 under (a) of this section

4 (1) in a region designated by the commissioner of fish and game for  
5 the purpose of salmon production under AS 16.10.375;

6 (2) if there exists in that region an association determined by the  
7 commissioner of fish and game to be a qualified regional association under  
8 AS 16.10.380; and

9 (3) if the qualified regional association approves the five percent  
10 salmon enhancement tax under AS 43.76.015.

11 **Sec. 43.76.009. Four percent salmon enhancement tax.** (a) A person  
12 holding a limited entry permit under AS 16.43 shall pay a salmon enhancement tax at  
13 the rate of four percent of the value of salmon, as defined in AS 43.75.290, that the  
14 person removes from the state or transfers to a buyer in the state. The buyer shall  
15 collect the salmon enhancement tax at the time the salmon is acquired by the buyer.

16 (b) A four percent salmon enhancement tax may only be levied or collected  
17 under (a) of this section

18 (1) in a region designated by the commissioner of fish and game for  
19 the purpose of salmon production under AS 16.10.375;

20 (2) if there exists in that region an association determined by the  
21 commissioner of fish and game to be a qualified regional association under  
22 AS 16.10.380; and

23 (3) if the qualified regional association approves the four percent  
24 salmon enhancement tax under AS 43.76.015.

25 \* **Sec. 2.** AS 43.76.015(b) is amended to read:

26 (b) The salmon enhancement tax is levied under AS 43.76.003 - 43.76.012  
27 [AS 43.76.010, 43.76.011, OR 43.76.012] in a region on the effective date stated on  
28 the ballot if

29 (1) it is approved by a majority vote of the eligible interim-use permit  
30 and entry permit holders voting in an election held under this section in the region; and

31 (2) the election results are certified by the commissioner of community

1 and economic development.

2 \* **Sec. 3.** AS 43.76.015(c) is amended to read:

3 (c) In conducting an election under this section, a qualified regional  
4 association shall adopt the following procedures:

5 (1) the qualified regional association for the region shall hold at least  
6 one public meeting not less than 30 days before the date on which ballots must be  
7 postmarked to be counted in the election to explain the reason for the proposed salmon  
8 enhancement tax and to explain the registration and voting procedure to be used in the  
9 election; the qualified regional association shall provide notice of the meeting by

10 (A) mailing the notice to each eligible interim-use permit and  
11 entry permit holder;

12 (B) posting the notice in at least three public places in the  
13 region; and

14 (C) publishing the notice in at least one newspaper of general  
15 circulation in the region at least once a week for two consecutive weeks before  
16 the meeting;

17 (2) the qualified regional association shall mail two ballots to each  
18 eligible interim-use permit and entry permit holder; the first ballot shall be mailed not  
19 more than 45 days before the dates ballots must be postmarked to be counted in the  
20 election; the second ballot shall be mailed not less than 15 days before the date ballots  
21 must be postmarked to be counted in the election; the qualified regional association  
22 shall adopt procedures to ensure that only one ballot from each eligible interim-use  
23 permit and entry permit holder is counted in the election;

24 (3) the ballot must

25 (A) indicate whether the election relates to a salmon  
26 enhancement tax under AS 43.76.003, 43.76.004, 43.76.005, 43.76.006,  
27 43.76.007, 43.76.008, 43.76.009, 43.76.010, 43.76.011, or 43.76.012  
28 [AS 43.76.010, TO A SALMON ENHANCEMENT TAX UNDER  
29 AS 43.76.011, OR TO A SALMON ENHANCEMENT TAX UNDER  
30 AS 43.76.012];

31 (B) ask the question whether the salmon enhancement tax shall

1 be levied;

2 (C) indicate the boundaries of the region in which the salmon  
3 enhancement tax will be levied;

4 (D) provide an effective date for the levy of the salmon  
5 enhancement tax; and

6 (E) indicate the date on which returned ballots must be  
7 postmarked in order to be counted;

8 (4) the ballots shall be returned by mail and shall be counted by the  
9 commissioner of community and economic development or by a person approved by  
10 the commissioner of community and economic development.

11 \* **Sec. 4.** AS 43.76.020(a) is amended to read:

12 (a) The salmon enhancement tax levied under AS 43.76.003 - 43.76.012  
13 [AS 43.76.010, 43.76.011, OR 43.76.012] may be terminated by the commissioner of  
14 revenue upon majority vote at an election held under AS 43.76.015 in the region in  
15 which the salmon enhancement tax is levied.

16 \* **Sec. 5.** AS 43.76.025(a) is amended to read:

17 (a) A buyer who acquires fisheries resources that are subject to a salmon  
18 enhancement tax imposed under AS 43.76.003 - 43.76.012 [BY AS 43.76.010,  
19 43.76.011, OR 43.76.012] shall collect the salmon enhancement tax at the time of  
20 purchase, and shall remit the total salmon enhancement tax collected during each  
21 month to the department by the last day of the next month.

22 \* **Sec. 6.** AS 43.76.025(c) is amended to read:

23 (c) The salmon enhancement tax collected under AS 43.76.003 - 43.76.028  
24 [AS 43.76.010 - 43.76.028] shall be deposited in the general fund. The legislature may  
25 make appropriations based on this revenue to the Department of Community and  
26 Economic Development for the purpose of providing financing for qualified regional  
27 associations. The legislature may base an appropriation for a qualified regional  
28 association operating within a region designated under AS 16.10.375 on the value of  
29 the fisheries resources caught in that region rather than the value of the fisheries  
30 resources sold in that region if those values differ.

31 \* **Sec. 7.** AS 43.76.028(a) is amended to read:

1 (a) The owner of salmon removed from the state is liable for payment of a  
2 salmon enhancement tax imposed under AS 43.76.003 - 43.76.012 [BY  
3 AS 43.76.010, 43.76.011, OR 43.76.012] if, at the time the salmon are removed from  
4 the state, the tax payable on the salmon has not been collected by a buyer.

5 \* **Sec. 8.** AS 43.76.035 is amended to read:

6 **Sec. 43.76.035. Exemption.** AS 43.76.003 - 43.76.040 [AS 43.76.010 -  
7 43.76.040] do not apply to salmon harvested under a special harvest area entry permit  
8 issued under AS 16.43.400.

9 \* **Sec. 9.** AS 43.76.040 is amended to read:

10 **Sec. 43.76.040. Definition.** In AS 43.76.003 - 43.76.040 [AS 43.76.010 -  
11 43.76.040], unless the context otherwise requires, "buyer" means a person who  
12 acquires possession of salmon from the person who caught the salmon regardless of  
13 whether there is an actual sale of the salmon but excluding a transfer to a person  
14 engaged solely in interstate transportation of goods for hire.